

IN THE CIRCUIT COURT OF NEWTON COUNTY
STATE OF MISSOURI

STATE OF MISSOURI ex rel. ERIC S.)
SCHMITT, in his official capacity as)
Missouri Attorney General,)

Plaintiff,)

v.)

THE CITY OF FAIRVIEW,)

Defendant.)

F I L E D
SEP 28 2021

PATTY A. KRUEGER
CLERK OF THE CIRCUIT COURT

Case No. 21NW-CV00965

CONSENT JUDGMENT

The Attorney General of the State of Missouri ("Attorney General") and the City of Fairview ("Fairview") assent to the entry of this Consent Judgment. The parties advise the Court that they consent to its terms for settlement purposes only, and they conditioned their consent upon the Court approving this document in its entirety.

The Court has considered the Attorney General's Petition, which alleged that Fairview violated the Missouri Sunshine Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition, and that the parties desire to terminate this controversy by consenting to the entry of this judgment without trial. The Court retains jurisdiction over the parties and this matter in order to enforce the terms of this Consent Judgment.

The parties agree to the following:

I. Jurisdiction and Venue

1. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

2. This Court has subject matter jurisdiction over this action pursuant to § 610.027.1, which allows the Attorney General to seek judicial enforcement of the requirements of Missouri's Sunshine Law, set forth in §§ 610.010 to 610.026.

3. This Court has personal jurisdiction over Defendant City of Fairview because its principal place of business is in Newton County, Missouri.

4. Venue is proper in this Court under § 610.027.1 because Defendant City of Fairview's principal place of business is in Newton County, Missouri.

II. Parties

5. Eric Schmitt is the duly elected Attorney General of the State of Missouri and brings this action in his official capacity pursuant to § 610.027.

6. Defendant City of Fairview is a public governmental body under § 610.010(4), and its meetings, actions, and records are subject to the provisions of Missouri's Sunshine Law.

III. General Provisions

7. The objectives of the parties to this Consent Judgment are to promote the purposes of Missouri's Sunshine Law, including access to public meetings and transparency in the conduct of public business.

8. If any provision of this Consent Judgment is declared invalid by a court of competent jurisdiction, the rest of this Consent Judgment shall remain in full force and effect and shall not be affected by such declaration.

9. The parties must agree in writing and must receive approval from the Court in order to modify or amend this Consent Judgment.

10. This Consent Judgment embodies the entire agreement and understanding of the parties with respect to the subject matter contained herein.

11. This Consent Judgment is entered into pursuant to the laws of the State of Missouri and shall be governed by and construed in accordance with the laws of the State of Missouri.

12. The provisions of this Consent Judgment jointly and severally bind all parties to this action as well as their respective agents, servants, employees, heirs, successors, assigns, and successors in elected or appointed office. Additionally, these provisions bind all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of, the parties to this action or their agents, servants, employees, heirs,

successors, assigns, and successors in elected or appointed office. The parties consent to this Consent Judgment through their duly authorized representatives.

13. This Consent Judgment resolves all claims Plaintiff has or may have against Defendant under Chapter 610 for the acts alleged in the Petition.

14. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under Missouri law or regulations or under federal laws or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of Missouri law or regulations that were not alleged in the Petition.

15. Plaintiff and Defendant agree that Plaintiff will file this Consent Judgment with the Court and will seek approval from the Court for this Consent Judgment.

16. Plaintiff and Defendant agree that execution of this Consent Judgment constitutes actual notice of its terms, and Defendant expressly waives service of this Consent Judgment.

17. Plaintiff and Defendant recommend that the Court approve this Consent Judgment, and enter judgment in accordance with the terms thereof.

18. This Court shall retain jurisdiction to enforce the terms of this Consent Judgment.

19. Plaintiff and Defendant, in agreement with the foregoing, affix their signatures below and consent to entry of this Consent Judgment. In affixing its signature hereto, by an authorized individual with the authority to bind Defendant to these terms, Defendant acknowledges and attests to receiving the advice of counsel on this matter, having read this Consent Judgment, and fully understanding the terms herein.

20. Each side shall bear its own attorney's fees, court costs, and litigation expenses incurred as a result of the investigation or litigation of the lawsuit, and neither side shall have any financial responsibility for the attorney's fees, court costs, or litigation expenses incurred by the other side.

21. Each side stipulates that each of the findings of fact made below by the Court are true, accurate, and undisputed.

22. Both parties agree and have advised the Court that the Attorney General's Office will maintain any documents Fairview provides to the

Attorney General's Office as a public record in accordance with both the Sunshine Law and the Attorney General's Office's applicable records retention policy.

IV. Findings of Fact

23. On April 9, 2021, the Attorney General filed a lawsuit in the Circuit Court of Newton County, Missouri, Case Number 21NW-CV00965 against Fairview, alleging that Fairview violated § 610.022, RSMo.

Impeachment Discussions in Closed Session

24. On October 13, 2020, the City Council, while in a closed session of a meeting, discussed and voted on the impeachment of a member of the City Council.

25. The agenda for the October 13, 2020, meeting stated the City Council would meet in both open and closed session.

26. The open-session agenda items included discussions about city accounts, street signs, job applications, and cameras, among others.

27. The agenda indicated that following the open-session meeting, the Council would meet in closed session pursuant to § 610.021(2), (3), and (12).

28. The agenda did not identify impeachment proceedings.

29. After a few items of public business were discussed and decided in the open-session meeting, Councilmember Pam McNee introduced a motion to adjourn to closed session citing only §§ 610.020 and 610.021(3). Three

councilmembers voted in favor of adjourning to closed session, with Councilmember Stapleton voting against the motion.

30. While in closed session, Councilmember Tammy O'Brien introduced thirteen (13) articles of impeachment against Councilmember Stapleton.

31. After a recitation of the articles of impeachment, Councilmember O'Brien moved to impeach Councilmember Stapleton. The City Council voted 3 in favor, with Councilmember Stapleton abstaining, to impeach Councilmember Stapleton.

32. After the impeachment vote, the remaining City Council members returned to an open-session meeting where additional items of public business were discussed and voted on.

33. Prior to the meeting, Councilmember O'Brien spoke with the Missouri Municipal League about impeaching Councilmember Stapleton.

34. Prior to the meeting, Councilmember O'Brien discussed the possibility of impeaching Councilmember Stapleton with at least one other member of the City Council.

35. Prior to the meeting at least two Councilmembers knew that the impeachment of Councilmember Stapleton would be discussed at the October 13, 2020, meeting.

36. At least two members of the City Council intended the discussion and vote to be held in closed session.

Ordinance Changes in Closed Session

37. The City Council was reminded by its attorney on at least one occasion, prior to the actions discussed below, that closed meetings must be limited to the topics originally cited to close the meeting.

A. Minimum Age for City Employment

38. On August 11, 2020, the City Council, while in a closed session of a meeting, discussed and voted on a proposal to change City Ordinance 23.050.

39. The agenda for the August 11, 2020, meeting stated the City Council would meet in closed session under § 610.021(2), (3), and (12).

40. The agenda did not indicate that the City would discuss a city ordinance or the City's hiring practices.

41. After adjourning to closed session, the City Council voted 3 to 1 to change City Ordinance 23.050, to lower the age requirement for City employees from 18 to 16, all in closed session. The Mayor refused to assent.

42. The City considered the ordinance change adopted following the vote, and pursuant to § 79.140 began to put the change into law.

B. Maximum Age for City Employment

43. On October 13, 2020, the City Council, while in a closed session of a meeting, discussed and voted on a proposal to change City Ordinance 23.050.

44. The agenda for the October 13, 2020, meeting included Ordinance 23.050 in the “unfinished business” category in the open-session meeting agenda.

45. However, the City Council discussed Ordinance 23.050 in closed session.

46. The agenda for the October 13, 2020, meeting stated the City Council would meet in closed session under § 610.021(2), (3), and (12).

47. The City Council discussed and voted 3 to 0 to change City Ordinance 23.050, to remove the maximum age requirement for City employment, all in closed session.

48. The City considered the ordinance change adopted following the vote, and put the change into effect.

Discussion of Resignation in Closed Session

49. On July 14, 2020, the City Council, while in a closed session of a meeting, discussed and voted to accept the resignation of the City of Fairview Police Chief, set the details for the Chief’s departure, and begin the search for a new police chief.

50. The agenda for the July 14, 2020, meeting stated the City Council would meet in closed session under § 610.021(3).

51. The closed meeting did not include a discussion related to the hiring, firing, disciplining, or promoting of the Chief in a manner when the Chief's personal information was discussed or recorded.

Discussion of Business Relationship in Closed Session

52. On August 11, 2020, the City Council, while in a closed session of a meeting, discussed the City's relationship the local business "R Shop" and potential conflicts of interest with that business.

53. The agenda for the August 11, 2020, meeting stated the City Council would meet in closed session under § 610.021(2), (3), and (12).

54. The agenda did not indicate that the City would discuss R Shop.

55. During the open-session portion of the August 11, 2020 meeting, Mayor Rodgers brought up a possible conflict of interest with R Shop.

56. The minutes for the open-session meeting state that the "City attorney clarified R Shop has the legal right to sell or offer services in the State of Missouri for any product, not just what is listed on the initial company disclosure." The minutes accurately reflect what transpired during the meeting.

57. After brief discussion, Councilmember Canoy made a motion to adjourn to closed session citing § 610.021(3), which passed by a vote of 3-1.

58. In the closed session meeting, the City Council and the Mayor proceeded to discuss the City's relationship with R Shop, Missouri Ethics Commission guidance, and potential conflicts of interest.

III. Conclusions of Law

59. City of Fairview City Council is a public governmental body under § 610.010(4), and its meetings, actions, and records are subject to the provisions of the Sunshine Law. Its actions are attributable to the City of Fairview, which is also a public governmental body under § 610.010(4).

60. On October 13, 2020, the City Council violated § 610.022.3 when, while in a closed session of a meeting, it discussed and voted on the impeachment of a member of the City Council. These discussions were not authorized to be closed under the provision of § 610.021 cited by the City to close the meeting, and it was not authorized to be closed under any provision of § 610.021. This violation was knowing in light of the City's knowledge of its Sunshine Law obligations and consequences of violations of those obligations.

61. On August 11, 2020, and October 13, 2020, the City Council violated § 610.022.3 when, while in a closed session of a meeting, it discussed and voted on a proposals to change City Ordinance 23.050. These discussions and votes were not authorized to be closed under the provision of § 610.021 cited by the City to close the meeting, and it was not authorized to be closed under any provision of § 610.021. This violation was knowing in light of the

City's knowledge of its Sunshine Law obligations and consequences of violations of those obligations.

62. On July 14, 2020, the City Council violated § 610.022.3 when, while in a closed session of a meeting, it discussed and voted to accept the resignation of the City of Fairview Police Chief, set the details for the Chief's departure, and begin the search for a new police chief. These discussions were not authorized to be closed under the provision of § 610.021 cited by the City to close the meeting. This violation was knowing in light of the City's knowledge of its Sunshine Law obligations and consequences of violations of those obligations.

63. On August 11, 2020, the City Council violated § 610.022.3 when, while in a closed session of a meeting, it discussed the City's relationship with R Shop and potential conflicts of interest with that business. These discussions were not authorized to be closed under the provision of § 610.021 cited by the City to close the meeting, and it was not authorized to be closed under any provision of § 610.021. This violation was knowing in light of the City's knowledge of its Sunshine Law obligations and consequences of violations of those obligations.

V. Relief

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff is entitled to and shall receive a declaration on all four Counts of the Petition that Fairview knowingly violated § 610.022.3 of the Sunshine Law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in light of the size of the City of Fairview, seriousness of the offenses, and history of Sunshine Law compliance, Defendant shall pay a \$250 civil monetary penalty for each of the four violations of the Sunshine Law, for a total penalty of \$1,000, pursuant to § 610.027.3.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that \$600 of the civil monetary penalty due pursuant to § 610.027.3 shall be suspended, subject to being executed if the Court subsequently finds a violation of this Consent Judgment has occurred. If no such violation occurs, the \$600 penalty shall be forgiven upon conclusion of the terms of this Consent Judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all actions taken to amend City Ordinance 23.050 on August 11, 2020, and October 13, 2020, are hereby voided, pursuant to authority granted by §§ 610.027.5 and 610.030. The voiding of said actions shall be STAYED for forty-five (45) days from the issuance of this order, to allow the City Council an opportunity to make changes it sees fit to City Ordinance 23.050, in accordance with all applicable laws and in a manner compliant with the Sunshine Law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that for a period of two (2) years from the date this Consent Judgment is entered by the Court, unless a different time period is specified below, Fairview shall:

A. Training. Ensure that all current members of the City Council, the Mayor of Fairview, and the Clerk of Fairview attend one (1) presentation about the Sunshine Law sponsored by the Missouri Attorney General's Office;

B. Closed meetings.

- i. Close meetings of the City Council only as specifically authorized by the Sunshine Law;
- ii. Before the City Council holds a vote to close a meeting, publicly announce in the meeting the specific section of the Sunshine Law that authorizes the meeting to be closed;
- iii. When the City Council holds a closed meeting, discuss and/or vote on only those topics encompassed by the specific section of the Sunshine Law that authorized the meeting to be closed;
- iv. When the City Council holds a closed meeting, state in Fairview's meeting minutes the specific section of the Sunshine Law that authorized the meeting to be closed;

C. Meeting notices.

- i. For a period of six months following entry of this Consent Judgment, provide the Attorney General's Office with a copy of the meeting notice and agenda at least twenty-four (24) hours in advance of each City Council meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given;
- ii. Post to a prominent place, which is easily accessible to the public, a copy of each City Council meeting notice at least twenty-four (24) hours in advance of the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given;

D. Meeting minutes.

- i. For a period of six months following the entry of this Consent Judgment, provide the Attorney General's Office with a copy of the finalized minutes for each open City Council meeting within three (3) business days after the Council votes to approve the meeting's minutes;

E. Meeting recordings.

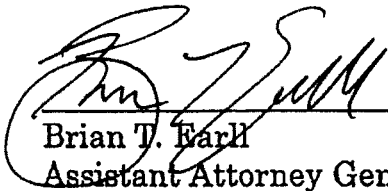
- i. Record the audio of each City Council meeting, whether open or closed, on a device capable of recording audio and maintain those recordings as public records under § 610.010(6) for at least the duration of this Consent Judgment and in accordance with all applicable retention schedules thereafter;
- ii. Provide the Attorney General's Office with a digital copy of the audio recording for any open City Council meeting, if so requested by the Attorney General's Office and within three (3) business days of the request; and

F. Enforcement.

- i. For a period of two (2) years from the entry of this Judgment, should the Attorney General's Office have reasonable cause to believe that Fairview has not complied with any of the terms of this Judgment, the Attorney General's Office may send a written demand to Fairview outlining the suspected violation.
- ii. Fairview shall have fifteen (15) days from its receipt of the written demand to contest or cure the violation.

- iii. If the suspected violation is not resolved or cured within fifteen (15) days, either party may move this Court to enforce this Judgment and adjudicate the suspected violation.
- iv. Notwithstanding the above, the Attorney General's Office may move to enforce this consent judgment in this Court to the extent the Attorney General's Office has reasonable cause to believe a suspected violation of the consent judgment occurred which cannot be cured through action by Fairview.
- v. If the Attorney General's Office has reasonable cause to believe that the Council may have improperly discussed an item of public business in a closed-session meeting, Fairview will allow the Court *en camera*, in the presence of the Attorney General's Office, to view a copy of the closed meeting minutes and listen to a copy of any audio records made of the meeting.
- vi. If the Court finds that Fairview did violate any of the terms of this Judgment and Fairview did not cure the violation after receiving notification from the Attorney General's Office, pursuant to § 610.027.3, such violation

will be deemed to be a knowing violation of the Sunshine Law and Fairview shall be liable to pay one thousand dollars (\$1,000) for any such violation, in addition to the \$600 suspended portion of the penalty for the present violations detailed previously.

 8/24/21


Brian T. Earl Date
Assistant Attorney General

Attorney for Plaintiff

 8-18-2021

Date

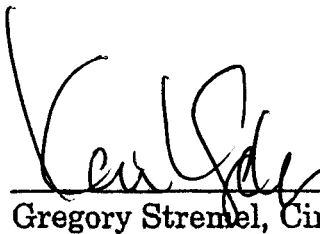
*Authorized Representative
City of Fairview*

 8-19-21

William E. Peterson Date

Attorney for Defendant

SO ORDERED.

_____
Gregory Stremel, Circuit Judge

Date: 9/27/21
